

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Willie Wair III,

Case No. 21-CV-2601 (JRT/ECW)

Petitioner,

v.

**REPORT AND RECOMMENDATION**

Tracy Beltz and Keith Ellis,

Respondents.

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In an order dated January 7, 2022, this Court—after reviewing Petitioner Willie Wair III’s initial filing in this action—ordered Wair to submit an amended habeas petition. (*See* Dkt. 6 at 2.) The Court granted Wair two extensions to file this petition (*see* Dkts. 9, 11); in an Order dated April 22, 2022, the Court gave Wair until May 20, 2022, to submit the filing (*see* Dkt. 11 at 2). That Order specifically warned Wair that if he missed that deadline, “the Court [would] recommend dismissing this action for failure to prosecute under Federal Rule of Civil Procedure 41(b).” (*Id.* at 3.)

That deadline has now passed, and Wair has not filed an amended petition. The Court thus recommends, in accordance with its prior Order, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. *See, e.g., Henderson v. Renaissance Grand Hotel*, 267 F. App’x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”).

### RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein,  
**IT IS RECOMMENDED** that this action be **DISMISSED WITHOUT PREJUDICE**  
under Federal Rule of Civil Procedure 41(b) for failure to prosecute.

Dated: May 31, 2022

s/Elizabeth Cowan Wright  
ELIZABETH COWAN WRIGHT  
United States Magistrate Judge

### NOTICE

**Filing Objections:** This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).